

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :
: Case No. 22-CV-05209-GJP
Plaintiff, :
:
vs. : Philadelphia, Pennsylvania
: April 11, 2025
AMERISOURCEBERGEN CORPORATION, : 1:09 p.m.
AMERISOURCEBERGEN DRUG :
CORPORATION AND INTEGRATED :
COMMERCIALIZATION SOLUTIONS, LLC, :
:
Defendants. :
:
* * * * * :

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE GERALD J. PAPPERT
UNITED STATES DISTRICT COURT JUDGE

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1 APRIL 11, 2025

1:09 P.M.

2 THE COURT: Okay. Can't tell the players without a
3 program, but we have everyone's names. I don't need to call the
4 roll, do I?

5 All right. So kind of a curious set of circumstances
6 here. First of all, I don't know why we couldn't have done this
7 over the phone, but you guys wanted to come in, so here we are.
8 I mean, I didn't have to travel very far. But I have one side
9 saying we need a Special Master with a number of items that are
10 purportedly in dispute. And then I have the other side saying we
11 don't need a Special Master; we really don't have anything left
12 to resolve. So pardon my confusion. Who wants to start?

13 MS. SWIFT: Your Honor, Defendants are happy to start.
14 Abby Swift for Defendants, Your Honor.

15 THE COURT: How are you?

16 MS. SWIFT: I'm great. How are you, Your Honor?

17 THE COURT: Good, thank you.

18 MS. SWIFT: We appreciate you doing this in person.

19 THE COURT: Absolutely.

20 MS. SWIFT: On a Friday, of course. Defendants have
21 tried to work diligently with the Government.

22 THE COURT: Not just work, work diligently.

23 MS. SWIFT: Yes, work diligently for the last year plus
24 in discovery. The parties have recently set up biweekly meet and
25 confers. And while those have been somewhat helpful, we are

1 growing increasingly concerned with the number of outstanding
2 issues that the parties continue to have, the length of time it
3 takes the Government to provide their position on issues, and the
4 pace of the Government's productions. I know we sent Your Honor
5 a list of outstanding disputes. I'm happy to go through those in
6 more detail if it would be helpful.

7 THE COURT: I think there may be time for that today.

8 MS. SWIFT: Sure.

9 THE COURT: Yes.

10 MS. SWIFT: Sure.

11 THE COURT: But not just yet. Go ahead.

12 MS. SWIFT: But at its core, Your Honor, we have a July
13 25th deadline to produce documents, that is less than four months
14 away. Defendants have utilized Special Masters in other cases
15 similar to this one. In the opioid litigation brought by cities,
16 states, counties. We have found that those Special Masters have
17 been largely helpful for both sides to move the case along
18 efficiently. And we think that's what we need here.

19 We've been going around and around with the Government
20 for months on many of these issues, and we need resolution, we
21 need finality. And we do anticipate that more disputes will crop
22 up between now and the end of document production and between now
23 and the end of fact discovery.

24 THE COURT: Understood. You're sure you're just not
25 trying to get a different judge to look at this stuff?

1 MS. SWIFT: We're sure. We're sure.

2 Speaker B: Given my prior rulings.

3 MS. SWIFT: We're sure, Your Honor. There are a number
4 of --

5 THE COURT: No offense taken, by the way.

6 MS. SWIFT: No, no. There are a number of issues that
7 we don't think rise to the level of --

8 THE COURT: I get it.

9 MS. SWIFT: -- a motion to compel. We think it would
10 be much more useful to have informal meetings with a Special
11 Master or an independent third party for the parties to talk
12 things out, move things along. If we do need formal briefing,
13 we've set a protocol for that, but we think a lot of this can be
14 handled informally.

15 THE COURT: I appreciate that. Thank you for your
16 assessment of things. And this is my now 11th year. I've only
17 appointed a Special Master once, and that was at my insistence
18 when I told both sides that I simply couldn't take it anymore.
19 And actually, it's worked well. The litigation is longer
20 running, and there's more tentacles to it, believe it or not,
21 than this one. So that's worked in that case.

22 But it's unusual -- well, once in 11 years, 10 plus
23 years, it's unusual for me to do that. And when I told the
24 parties of my opinion, they promptly consented to the magistrate,
25 which, as you know, under Rule 53, unless the statute provides

1 otherwise, a court may appoint a master only; A) to perform
2 duties consented to by the parties. It appears, at least to this
3 point, we don't have the other side's consent. Whole trial
4 proceedings, et cetera. Address -- and the other one that's
5 relevant here is address pretrial and post-trial matters that
6 cannot be effectively and timely addressed by an available
7 district judge or magistrate judge of the district. I guess --
8 did I take too long to answer that one discovery dispute?

9 MS. SWIFT: No, Your Honor.

10 THE COURT: Oh, okay. All right. And I've never been
11 bright enough to farm this kind of stuff out to magistrate
12 judges. I know my colleagues do. I've just -- I'm kind of slow.
13 I just figure I'll do it. So it is a bit unique. I don't know
14 that absent consent, I really have yet seen the need for the
15 appointment of a master, though I know you've raised timeliness
16 concerns.

17 MS. SWIFT: Yes.

18 THE COURT: But look, happy to hear from the Government
19 who tells me, not surprisingly, everything you say is wrong and
20 everything is just great as far as they're concerned. So why
21 don't you give me that optimistic report?

22 MR. SCOTT: Thank you, Your Honor. John Scott, on
23 behalf of the Government.

24 THE COURT: Mr. Scott, good to see you.

25 MR. SCOTT: Good to see you as well. I think that as

1 we lay out in the letter that we submitted this morning, it's the
2 Government's position that a Special Master at this point is not
3 necessary and actually would potentially add an extra layer of
4 potential inefficiency to the process.

5 THE COURT: There is -- excuse me, because --

6 MR. SCOTT: Of course.

7 THE COURT: -- you raised something I meant to raise
8 with Ms. Swift. There is some merit to that, in my experience,
9 having the Special Master order the briefing. And again, this is
10 -- this case redefines what it means to be a contested case.
11 There have been, over the course -- this has been going on for --
12 I'm in my eighth year of this litigation, this other case. And
13 there's always then objections to the Special Masters. Then that
14 comes to me, and then we have more briefing.

15 It does -- it can, when used in good faith, even,
16 lengthen the time for decision on these things, but I guess
17 that's part of what we'll talk about, too. Go ahead. I didn't
18 mean to interrupt you.

19 MR. SCOTT: Sure.

20 THE COURT: You just reminded me of something I thought
21 I had too.

22 MR. SCOTT: Of course, Your Honor. And quite frankly,
23 I think that that articulates the Government's position well.
24 The letter that was -- or the email that was submitted by Defense
25 counsel outlines a number of issues that have been the subject of

1 discussions between the parties at the every -- the biweekly meet
2 and confer that is currently, you know, proceeding every week.
3 Every two weeks, excuse me, in addition to individual, you know,
4 smaller breakout groups discussing, you know, other issues as
5 they've come up. We're happy to go through the list, if that's
6 what Your Honor would like.

7 THE COURT: Yeah, I mean, look, we're all here. I
8 think we can. If there's anything I can do while we're all here
9 to resolve any of these things or move things along more quickly.

10 Candidly, the one part of the Defendants -- the one
11 aspect of the Defendants concerns with which, you know, I am
12 mindful of and do need some answers from the Government on is, at
13 least according to the Defendant, the pace of production, and not
14 the Defense's word, I'll use the delays in getting them what
15 they've asked for, particularly given, you know, the current
16 deadlines.

17 So is that better addressed in the context of the
18 individual issues that you've laid out or?

19 MR. SCOTT: You know, Your Honor, I think as to
20 production issues, I think my colleague, Amy DeLine probably is
21 better to speak to that. But what I can say, just in general, is
22 that, again, this has been something that has been discussed.
23 From the Government's perspective, we've committed resources to
24 this. We are pushing this along as quickly as possible.

25 THE COURT: Hold on. You've committed resources to

1 this?

2 MR. SCOTT: Yes, Your Honor.

3 THE COURT: Do you want extra credit for that? I mean,
4 you brought the case.

5 MR. SCOTT: Of course, Your Honor.

6 THE COURT: Okay.

7 MR. SCOTT: The point being is that this is something
8 that has been discussed at the meet and confer process. We are
9 moving it along as we are able to. And, again, as I pointed out
10 initially, adding an additional layer of briefing and potential
11 argument to that would not necessarily have resulted in
12 efficiency.

13 THE COURT: Well, there's a way to -- there is a way to
14 -- there's a way to shortcut all that, and that's just give them
15 what they've asked for in a timely manner.

16 MR. SCOTT: We have been making -- and again, my
17 colleague can set out in detail kind of the number of
18 productions. I know that we've made at least 20 productions over
19 the past year. We're getting them out expeditiously. I think
20 that we were supposed to have a production that was supposed to
21 go out today. We are producing documents as --

22 THE COURT: Is that more than a coincidence that it's
23 going out today, the same day we're having the hearing?

24 MR. SCOTT: It shouldn't -- it's not, Your Honor. It's
25 because they have been going out at a regular interval.

1 THE COURT: Okay. Look, please, both of you may sit
2 down if you want, or stay standing, whatever you want. Look,
3 I've gone over the list of outstanding disputes and, obviously,
4 individually, these are all pretty minor things and things that I
5 deal with conceptually in cases big and small, right. Inadequate
6 interrogatory responses. They haven't given us the documents
7 yet. You know, all pretty basic stuff that doesn't -- I mean, if
8 these are the issues here, my immediate take on this is nothing
9 here is really Special Master worthy.

10 But, you know, I know you're concerned about other
11 stuff coming down the pike, and maybe that'll happen, maybe it
12 won't. But why don't we just go through the list and see if
13 there's anything I can't do to, at least on a micro level,
14 address some of the Defendants' concerns?

15 So, Ms. Swift, identification of custodians. I'm not
16 real sure I fully understand that one.

17 MS. SWIFT: Yes, Your Honor. So custodial files are,
18 in a lot of ways, the foundation of document production. If we
19 don't have the right people --

20 THE COURT: Did you say custodial files?

21 MS. SWIFT: Custodial files. So individual --

22 THE COURT: So what does that mean in this context?

23 MS. SWIFT: Individuals who worked at the DEA,
24 currently or previously, who would have relevant responsive
25 information. The Government needs to search their email folders,

1 their shared drives on their laptops, the like -- but mostly,
2 when we say custodial files, we're talking about emails and
3 attachments to emails.

4 THE COURT: From the appropriate people within the --

5 MS. SWIFT: Yes.

6 THE COURT: Which I have to imagine is a fairly common
7 discovery process in Governmental litigation, right?

8 MS. SWIFT: Yes.

9 THE COURT: Okay.

10 MS. SWIFT: Yes.

11 THE COURT: Okay. So Defendants have concerns about
12 the Government's identification of relevant document custodians.
13 The Government has agreed that communications with and about
14 Defendants and communicated are relevant and responsive. Okay.
15 However, the Government has declined to identify individuals from
16 the DEA, namely the Regulatory Section, who communicated with
17 Defendants and relevant third parties, and has instead
18 represented this group is not an external facing group.

19 Okay. Now let me stop there. And I remember one of
20 the bases for the prior ruling was that, look, the stuff that the
21 agency folks are telling third parties and others is all fair
22 game for discovery, right? It was the internal musings of staff
23 and others.

24 So, Mr. Scott, how do you respond to this? And how
25 many custodians, ma'am, are we talking about? Do you even know,

1 or if they haven't identified anybody, or do you know who they
2 are, but they just won't give you their stuff?

3 MS. SWIFT: We know some of them, Your Honor. So the
4 Government has agreed to a number of custodians. Most of them
5 are diversion investigators in the field, they're not at DEA
6 Headquarters. They've only agreed to 21 individuals at DEA
7 Headquarters and a lot of those have been at Defendants'
8 insistence. When we said --

9 THE COURT: And then how many diversion folks?

10 MS. SWIFT: I believe it's somewhere in the 80s, Your
11 Honor. It's a total of 109 custodians.

12 THE COURT: Okay. So 88. You called them diversion --

13 MS. SWIFT: Diversion investigators.

14 THE COURT: -- investigators.

15 MS. SWIFT: And those are individuals that the
16 Government identified.

17 THE COURT: Right. So are you okay with the custodians
18 that have been identified that fall under the heading of
19 diversion investigators?

20 MS. SWIFT: So far, Your Honor, yes.

21 THE COURT: That's not where the current problem is.

22 MS. SWIFT: That's not where the current problem is.
23 Although we reserve rights if we find something.

24 THE COURT: You reserve the right to complain about
25 anything.

1 MS. SWIFT: Yes.

2 THE COURT: I get it, I get it, I get it. And so far,
3 other than the diversion investigators, whether they've given the
4 names to you willingly or whether you've had them drag along
5 kicking and screaming to give them to you, you have the names of
6 21 individuals at DEA Headquarters?

7 MS. SWIFT: At DEA Headquarters, yes.

8 THE COURT: Okay. Is the issue that you believe there
9 should be more individuals named within the DEA or that you're
10 okay with those 21 individuals, at least for now, but you haven't
11 received their stuff?

12 MS. SWIFT: It's both, Your Honor, actually.

13 THE COURT: Okay.

14 MS. SWIFT: So the first issue is that we do believe
15 there are additional individuals who have communicated with and
16 about Defendants and their reporting obligations and with
17 relevant third parties, like the industry group and like other
18 registrants. We were being told by the Government that this
19 Regulatory Section, for example, is not external facing. It's an
20 internal facing group. The Regulatory Drafting Section, same
21 thing. It's internal facing.

22 THE COURT: So internal facing, as I'm understanding it
23 would mean that would then fall under my heading of the internal
24 stuff that they can't give you.

25 MS. SWIFT: Exactly.

1 THE COURT: External facing should be the people who
2 are communicating with others, which we've said is okay for you
3 to receive.

4 MS. SWIFT: Exactly, Your Honor.

5 THE COURT: Okay.

6 MS. SWIFT: And we since discovered that there were
7 individuals in both of those groups that communicated directly
8 with Defendants. There were individuals giving us presentations,
9 emailing our Diversion Control employees, saying, looking forward
10 to working together.

11 THE COURT: So, you know, there are names of folks
12 there that are not -- that would have relevant materials that are
13 not within the 21?

14 MS. SWIFT: Yes, Your Honor. And to be clear, the
15 Government has agreed to add some of the ones that we have
16 identified. The problem is we're not confident that they have
17 the right people. And if they don't have the right people --
18 like, we don't know who communicated with other registrants or
19 with an industry group.

20 THE COURT: Well, wouldn't that be a subject of
21 depositions for some or -- you know, the people higher up the
22 pecking order within the 21 internally that you've been given so
23 that you can find out, or do you have interrogatory responses
24 asking who were the -- list all names of the people who
25 communicated with, you know, your clients, et al?

1 MS. SWIFT: Your Honor, in terms of the deposition, it
2 very well may be that we ask people at depositions.
3 Unfortunately, at that time, it's probably going to be too late.
4 Document production ends in less than four months, and we don't
5 want to take those depositions without having the files of those
6 individuals, which we're not getting. So I think that's the
7 first thing.

8 THE COURT: Okay. So do you have any handle on -- so
9 we have 21 people that you know about that they've identified for
10 you, excuse me. You haven't gotten their stuff?

11 MS. SWIFT: Yes.

12 THE COURT: And then there are an untold number of
13 others in addition to the 21 that you know or suspect should be
14 in the group that they've identified but aren't?

15 MS. SWIFT: Yes, Your Honor.

16 THE COURT: And, obviously, you haven't gotten their
17 stuff either.

18 MS. SWIFT: Yes, Your Honor.

19 THE COURT: How many, in addition to the 21 that have
20 been named, would you think might be people who are relevant, who
21 would have relevant information?

22 MS. SWIFT: I'm not sure of a number. If I had to
23 ballpark it, I'd probably say anywhere between five to 10. But
24 I'm not sure because we don't know what we don't know. We don't
25 have access to who DEA was communicating with from other

1 registrants or with industry groups. We only have a very limited
2 window into who (indiscernible) their communications with us. So
3 we are concerned that -- you know, the Government's represented
4 to us and to the Court that they would give us these
5 communications, but if they're not searching the right files,
6 we're not going to get those communications.

7 THE COURT: And again, these are all people who
8 indisputably have communicated with you or others similarly
9 situated on issues of relevance to the case?

10 MS. SWIFT: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. SCOTT: Your Honor, I think as to this particular
13 issue, my colleague, Amy DeLine is probably better at addressing
14 the substance.

15 THE COURT: Okay. Ma'am, how are you?

16 MS. DELINE: Good. How are you, Your Honor?

17 THE COURT: Good.

18 MS. DELINE: So let's talk -- I'll go over custodians,
19 but I want to sort of back up a little bit and talk about pace
20 because I think there's a few issues here that are floating
21 around.

22 So our discovery, as you would imagine, is quite broad
23 from Defendants and from DEA. There are sort of two buckets of
24 it. There's the stuff related to the customers, to Defendants
25 customers for whom we're saying Defendants failed to support --

1 report suspicious orders to DEA. So there's this sort of
2 customer discovery bucket, and then there's everything else from
3 DEA, including communications with Defendants, communication --
4 other external communications.

5 In both buckets, there are custodial files, which Ms.
6 Pierce has addressed. There are also investigative files from
7 DEA. We have been working with Defendants to work through these
8 different categories of documents. I will say we have started
9 our productions with the investigative files. Investigative
10 files are, quite frankly, what they sound like. They're
11 investigative files, right?

12 They're the DEA's central store of all of the memos,
13 all of the communications, all of the exhibits. The file for an
14 audit, an investigation, an inspection of a registrant. That
15 would be of Defendants. It would be of their customers. And
16 those files, as you can imagine, are incredibly dense. They
17 include reports of investigation written by the diversion
18 investigators. They include exhibits. They include internal
19 memos. They include all hundreds -- you know --

20 THE COURT: All relevant stuff.

21 MS. DELINE: All relevant stuff, all of which we need
22 to produce. Early on in discovery, we worked with Defendants to
23 come up with a discovery plan, both for the customer discovery
24 piece of it and the non-customer sort of all the other stuff.
25 Early in those conversations, they asked for investigative files.

1 They asked that we prioritize investigative files. They asked
2 that we prioritize investigative files for their -- for
3 Defendants and for customers for whom we allege diversion was
4 actually -- we know diversion was occurring.

5 So that's what we did. We prioritized these
6 investigative files. Again, they are incredibly dense. It's not
7 like reviewing emails. It's not like reviewing an attachment.
8 They can be a few pages. They can be hundreds of pages. They
9 can be memos that are three pages long. They can be memos that
10 are 20 pages long. And they all include various kinds of
11 potentially privileged information, right.

12 So they're law enforcement files, so they may have
13 executive privilege implicated by them. They have attorney-
14 client privileged information in them. They have work product
15 information in them. They have information -- grand jury
16 information. They have Bank Secrecy Act protected information.
17 They have information protected under state law. Excuse me.
18 There's any number of privileges and protections implicated by
19 these investigative files, which is all to say they're difficult
20 to review, they're difficult to produce.

21 We have been working on them. We've produced, I think,
22 somewhere around 500 case files so far.

23 THE COURT: How many people you have working on this
24 stuff?

25 MS. DELINE: It depends, because we have some people

1 working on these files and we have some people working on
2 custodial files because Defendants ask that we dual track, so we
3 are dual tracking. I think we have a team of about 30. But
4 these investigative files are awful to review and produce.

5 We've --

6 THE COURT: Let me stop here.

7 MS. DELINE: Sure.

8 THE COURT: I respect the practical realities of
9 governmental files --

10 MS. DELINE: Sure.

11 THE COURT: -- and the Government's love of memos. All
12 right. But look, the Government, after a lengthy period of time
13 and deliberation and with other cases as the model, decided to
14 bring this case. So the difficulties that the Government has in
15 collecting and producing indisputably relevant discovery
16 materials is not something I'm going to have much sympathy
17 toward. And that's not to diminish the efforts of you and the 30
18 folks behind you. But --

19 MS. DELINE: Understood, Your Honor. This is all just
20 to say we have been focused on getting those out. We've made 20
21 productions of --

22 THE COURT: How long has this process been going on?
23 When were these documents first requested?

24 MS. SWIFT: Your Honor, we sent our first RFPs, I
25 believe, in August of 2023, maybe even earlier than that. This

1 process has been going on for a very, very long time. And to be
2 clear, Defendants' position, and we told the Government this, is
3 that they've always needed to multi-track this. We've never told
4 them to get us certain files, you know, and put everything else
5 on the back burner. In fact, the very files that Ms. DeLine is
6 talking about, we were told we would get those and they would be
7 done with them in December. It is mid-April. We just received
8 our very first production of custodial files, so emails, last
9 week after this Court set this status conference.

10 THE COURT: It's amazing the cause and effect there is.

11 MS. SWIFT: It is. It is.

12 THE COURT: And I see that all the time. I don't know
13 what we're doing here, Judge, we gave them everything they asked
14 for.

15 THE COURT: When did you do that? We emailed it this
16 morning.

17 MS. SWIFT: Yeah.

18 THE COURT: I had one of those last week. I hear you.

19 MS. DELINE: Your Honor, I am not making excuses for
20 the Government. I am simply saying as an --

21 THE COURT: I know you're not. I think what I'm saying
22 is I wouldn't give it any weight anyway.

23 MS. DELINE: Yeah. So to be clear, Your Honor, we
24 didn't have our Rule 16(f) conference in this Court until January
25 of 2024. So productions started after that.

1 THE COURT: Well, that's 15 months.

2 MS. DELINE: And we have produced roughly 400,000 pages
3 of files. Defendants have produced roughly 500,000 pages. It's
4 not like we're on very different footing here. I am only saying
5 that in advance of getting to your question about custodians, we
6 have been producing documents. We're not in such different
7 positions. We expected these investigative files to be
8 incredibly burdensome. They are. We are obligated to produce
9 them. We are producing them. It is moving along at the pace we
10 expected. We committed to getting them a subset by December --

11 THE COURT: I think -- let's focus on at the pace we
12 expected. Who's the we?

13 MS. DELINE: The Government as shared with Defendants.
14 We have always said to them these files would take a long time.
15 We would need a learning curve to get our team ramped up and get
16 them out. Our productions would start small and get bigger.
17 That has all happened. We produced roughly 10,000 pages last
18 week. We produced another production this week. I expect we
19 will have another production going out next week.

20 So it -- while there is some coincidence to us being in
21 the court and us getting these files out, it is merely
22 coincidence. We are making productions every two to three weeks.

23 THE COURT: How about the custodian issue?

24 MS. DELINE: Yes.

25 THE COURT: The people. How many people? How many

1 custodians? You know, they're saying that, hey, we know there's
2 others out there because we have their names because we dealt
3 with them, and they're not listed. And how many other custodians
4 do you reasonably think we're going to be dealing with? And how
5 much more will that entail?

6 MS. DELINE: So we have roughly 110 to 120 custodians
7 to whom we've agreed. It includes about 90 diversion
8 investigators who, as Ms. Pierce said, interact in the field.
9 They are the people interacting, having conversations directly
10 with registrants.

11 THE COURT: Right.

12 MS. DELINE: Makes sense that we would include them.
13 There are then -- so that's the --

14 THE COURT: And that's not the issue or the problem
15 right now.

16 MS. DELINE: That's not the issue or problem. That is
17 -- but those are the people we know are interacting with
18 Defendants or other registrants or customers. And so we have --
19 we offered to produce them back in April of last year. We are
20 committed to producing them. We're working through their files.

21 There are then -- there's the diversion control group
22 at DEA headquarters. It's a relatively small group. Last April,
23 we proposed to give them for our relevant time period, the
24 assistant administrator who sits over that group for the entire
25 time period. I don't know how many people that is, five or six.

1 We then proposed to give them, and they agreed, all of
2 the section heads for the sections that we understand would have
3 relevant materials. That includes, in particular, the liaison
4 and policy sections. Those are the sections responsible for
5 giving guidance and information to registrants, including
6 Defendants.

7 THE COURT: And everybody you're talking about are
8 already within the 21 or so --

9 MS. DELINE: Yes. Yes.

10 THE COURT: -- that have been identified?

11 MS. DELINE: Yes.

12 THE COURT: And Ms. Swift thinks, and she doesn't know
13 what she doesn't know, there's maybe five to ten more people who
14 would match the definition of what she's concerned about. And
15 that seems to line up with your number if you're talking 120 to
16 130, and 90 of them are diversionary people, right? So that's --

17 MS. DELINE: So I think there are two different
18 regulatory groups that Ms. Swift has mentioned. One is the
19 Regulatory Section, which they are particularly focused on. That
20 is, and internal facing group. The folks in that section
21 coordinate with the field offices. They run deconfliction
22 checks. They make sure that the offices --

23 THE COURT: Is there anyone who you are defining as
24 internal facing who would possess information that is relevant
25 and discoverable, yet consistent with my prior decision?

1 MS. DELINE: So, Your Honor, we understand that the
2 Regulatory Section is primarily internal facing. I can't rule
3 out that folks there didn't have some external communications
4 here and there, but it's not the bulk of their or the focus of
5 their responsibilities.

6 In December, Defendants came to us and said, hey,
7 here's a list of eight or nine additional custodians, could you
8 consider adding them? We added from that list two people from
9 this Regulatory Section who they suggested had external facing
10 communications. We looked into it. They had a few. I wouldn't
11 say it rises to the level of it being a regular portion of their
12 jobs. I don't know. But based on what we saw, we thought, okay,
13 let's give them these. We'll compromise. I'm not sure we would
14 agree that they're discoverable, but we'll compromise. We'll
15 give you these, too.

16 They then came back recently, I think, in March and
17 said, hey, here's two more people we think you need to give us.
18 These two additional folks are staff coordinators. Their job is
19 literally coordinating for everyone else in the office. Ms.
20 Swift sent us an example email that included these two staff
21 coordinators. It also included two other custodians who we've
22 already agreed to give them.

23 We then have -- however, because they asked for them,
24 we said, okay, let's look into what their job was. Were they
25 external facing? Were they having internal conversations about

1 Defendants? Were they having regular or any substantive
2 conversations with Defendants? We talked to the folks, we talked
3 to other people in the group and they said no, they're staff
4 coordinators. They wouldn't have substantive communications with
5 Defendants.

6 THE COURT: Let me ask you this.

7 MS. DELINE: And just to finish this --

8 THE COURT: Let me ask you this.

9 MS. DELINE: Sure.

10 THE COURT: The concern is that there are an unknown
11 number of other people who may be appropriate, who may have --
12 may be custodians of relevant and discoverable information.

13 Counsel is guessing --

14 MS. DELINE: Sure.

15 THE COURT: -- five to ten. That's her ballpark. No
16 one's holding her to it.

17 MS. DELINE: Sure.

18 THE COURT: What about those people? That seems to be
19 the issue in addition to the pace of things which you've
20 addressed.

21 MS. DELINE: Your Honor, I think the couple of folks
22 that she's -- that Ms. Pierce has brought to us out of -- well,
23 let's say she's brought us five folks from this regulatory group.
24 We've added two, we've said two don't have substantive
25 communications. But because you've identified these other two,

1 we are still looking into this. It is -- I think we've been
2 having this conversation for a month, month and a half. It's a
3 10-year period. The folks at DEA Headquarters transition in and
4 out significantly or, you know, pretty frequently. The
5 responsibilities of the sections have changed over time.

6 So as part of our meet and confer process, we have been
7 investigating whether or not there's anyone else that we should
8 add.

9 THE COURT: So you're not saying they're giving you the
10 Heisman yet, right? You just don't have this stuff.

11 MS. SWIFT: Your Honor, I actually -- I think they are.
12 I mean, I think, here's the problem. We go to them in December
13 and say, we think these people would have relevant information.
14 Please add them. They say no. They didn't say yes. They said
15 no. And we said, here are some documents that show they had
16 direct communication with us and only then did they agree to add
17 a couple of those individuals. And they continue to tell us that
18 group is not external facing.

19 But if that group is not external facing, why are they
20 giving us presentations on the regulation? Why are they coming
21 to us and saying, you know, looking forward to collaborating and
22 working with you? It's just not adding up. And we're not
23 getting a -- we're not -- we're not getting anywhere with the
24 Government on these meeting confers. We're met with, well, we're
25 told that this -- that that group, despite the documents you

1 showed us, that's not what they do. We don't know why those
2 documents are out there, but that's not what they do. We're
3 going to -- you know, maybe we'll look into it, maybe we won't.
4 But like I said, we've been. We've been going around and around
5 on this since December. Document production ends in less than
6 four months, we need finality.

7 THE COURT: Oh, I'm sorry.

8 MS. SWIFT: No, no, I'm sorry Your Honor.

9 THE COURT: Wait a minute. She called you Ms. Pierce.
10 I called you Ms. Swift.

11 MS. SWIFT: Yes, Your Honor.

12 THE COURT: Who's right?

13 MS. SWIFT: You are both technically right. Pierce is
14 my maiden name.

15 THE COURT: Okay.

16 MS. SWIFT: Swift is my married name.

17 THE COURT: What do you go by?

18 MS. SWIFT: Swift.

19 THE COURT: Okay.

20 MS. SWIFT: Thank you.

21 THE COURT: Yeah. Because in your email it says
22 Pierce.

23 MS. SWIFT: Yeah, I'm in the middle of changing over.

24 THE COURT: Very good. Well, congratulations.

25 MS. SWIFT: Thank you.

1 THE COURT: All right. You're Ms. Swift from
2 Henceforward. So, look, Ms. Swift, the first bullet point ends
3 with, the Government still will not identify a list of
4 individuals at DEA who communicated with and about Defendants and
5 communicated with relevant third parties or confirmed that all
6 such individuals are custodians. At the end of the day, that's
7 what you want here, right?

8 MS. SWIFT: Yes.

9 THE COURT: I mean, as a first step anyway?

10 MS. SWIFT: Yes, that's what we want.

11 THE COURT: So, Ms. DeLine, that's the issue for the
12 Court today. Where is -- they would like a list of individuals
13 at DEA, which is apparently going to be names on top of the 21
14 they already have, who communicated with and about, et cetera,
15 relevant third parties. Can you give them that list?

16 MS. DELINE: Your Honor, we have given the names to
17 them of the folks of which we are aware, they are custodians. We
18 have added custodians.

19 THE COURT: But they've said there's names they don't
20 have that they know have communicated with them.

21 MS. DELINE: The two --

22 THE COURT: I mean, this isn't Special Master worthy.
23 I'm wondering if it's -- I mean, Jack, you want to handle this?
24 And this isn't hard. This isn't hard. It's like --

25 MS. DELINE: Your Honor --

1 THE COURT: -- I don't want to oversimplify, you know,
2 a serious issue. But what's it going to take you to determine
3 who had communications with Defendants and relevant third parties
4 on relevant topics?

5 MS. DELINE: Your Honor, we are working on it is all --
6 we have given them some names.

7 THE COURT: When will you --

8 MS. DELINE: I think we have an additional name for our
9 bi-weekly meet and confirm next week. We have identified another
10 central file store of external facing communications. I guess my
11 point is we are meeting and conferring as we are supposed to do.
12 The process is working well. We are attempting --

13 THE COURT: Yeah, I hear you and I -- hey, you're doing
14 a lot of work. I don't mean to apply you're not. I get it. But
15 the process may be working, but it's not working fast enough for
16 the Defendants and kind of for me too. It's not working fast
17 enough. So can you add people to the team?

18 MS. DELINE: Your Honor, I don't have perfect knowledge
19 of what's happened.

20 THE COURT: How about imperfect knowledge?

21 MS. DELINE: I have -- which they have. The folks of
22 whom.

23 THE COURT: No. Can you add to the team, the 30
24 people? Can you take it to 40 or 50?

25 MS. DELINE: I don't know. I am not in control of how

1 Government resources are allocated, so I don't know.

2 THE COURT: Should I call Elon directly?

3 MS. DELINE: I will say, Your Honor, we have identified
4 the folks at headquarters as they, through the meet and confer
5 process say, here's someone else. Can you look into it? We do.
6 We then have expanded on that to make sure we are getting them --

7 THE COURT: Okay.

8 MS. DELINE: -- sort of consistent with our Rule 26
9 obligations, the folks who are going to have communications.

10 THE COURT: Look, I hear you, I hear you, I hear you.
11 And July 25th isn't tomorrow, but it will come around pretty
12 quickly. And what would you like to take from this discussion?
13 What would you like from me?

14 MS. SWIFT: Yes, Your Honor. We would like a date
15 certain by which the Government must provide us a list -- an
16 exhaustive list of everyone at DEA Headquarters who had
17 communications with or about Defendants and with or about other
18 registrants and relevant third parties like the industry groups.

19 THE COURT: What would you like that date to be?

20 MS. SWIFT: I would like that date to be two weeks from
21 now, Your Honor. I think that's fair. We've been asking for
22 this for a really long time, and we're running out of time
23 because once we have that information, they need to add those
24 custodians, review them and produce them before the end of July.

25 THE COURT: So you'll get them a list of those people

1 within two weeks?

2 MS. DELINE: Your Honor, the -- I don't know that that
3 list is possible. We have identified for them the folks we know
4 had communications with Defendants. As we identify new folks,
5 we're telling them. I also don't think it is our obligation
6 under Rule 26 to identify everyone at DEA that may have ever had
7 a communication with Defendant or someone else. That's not --

8 THE COURT: Well, I didn't take the request to be that
9 limited. Maybe that's how it's been pitched to you. And I agree
10 that that would be overbroad. And that's, I don't think, what
11 the Defendants are seeking. They seem to have in mind people
12 that were more regularly communicating with either them,
13 registrants or third parties.

14 MS. DELINE: Which we have identified, Your Honor.

15 THE COURT: So how would you word it? Who've
16 communicated -- they say who communicated with. Who regularly
17 communicated with. Who communicated as part of their job, their
18 duties and responsibilities. Because we do have to have some
19 limiting principles here.

20 MS. SWIFT: Yes, Your Honor, I appreciate that. I
21 think the thing that would concern us though is the Government
22 has taken this view that if a department has -- this is their
23 primary function, they do this. But maybe 30 percent of the time
24 they communicate with registrants; they're going to tell us
25 that's not regular and they don't have to identify that person.

1 THE COURT: That's regular. Thirty percent is enough.

2 MS. DELINE: That is not -- we have never thrown out a
3 30 percent. What we are talking about, to be clear, is Ms. Swift
4 just identified a single email about a meeting that in fact never
5 actually happened and already has two other custodians who we've
6 promised to give them on it. So we're talking about one, a
7 meeting that never happened. So in an email communication about
8 scheduling that meeting. And it's being blown into this -- it's
9 the tail wagging the dog, right.

10 So we have looked into it. We have identified an
11 additional trove of shared file of extra external communications
12 that we are going to produce to them. We have identified the
13 groups that as 70 percent, 80 percent, whatever the percentage
14 is, are the external facing groups, in this particular section
15 that we are talking about.

16 We are looking at it to see if there are other folks
17 who had external non-duplicative communications with Defendants.
18 We are still working on it. We started working on this in March
19 when they brought the issue to us. It's not been that long.
20 It's been a month. And we've been working on it and we are
21 pushing it forward.

22 I just -- my takeaway from this, Your Honor, is we are
23 meeting and conferring. I understand that Defendants would like
24 things to move faster, but while we are addressing this, we are
25 continuing to produce documents.

1 THE COURT: I understand.

2 MS. DELINE: We are continuing to get stuff out the
3 door. So I --

4 THE COURT: I understand.

5 MS. DELINE: -- you know, I guess the last thing I will
6 say on this is we agreed to custodians a year ago, and now in
7 March of this year, they're saying a month is too long of a
8 delay. Well, from April until March of this year or even
9 December of last year, that was a very long a number of months
10 when it wasn't urgent for Defendants and now it is.

11 THE COURT: I'll tell you what, let me word something
12 that's appropriate, tries to strike the right balance and
13 obligates the Government to give them the best list you can give
14 them by the end of the month. That's April 31.

15 MS. DELINE: Okay.

16 THE COURT: Three weeks.

17 MS. DELINE: Sure.

18 THE COURT: Is that right? Yeah. All right. Okay.
19 Interrogatory responses. Defendants believe that a
20 number of the Government's interrogatory responses are deficient
21 and inadequate for several reasons, including the Government's
22 repeated invocation of Federal Rule of Civil Procedure 33(d).
23 Hang on a minute. Oh, yeah, the old option to produce business
24 records gag. All right. Yeah, I got that. It is a recognized
25 rule.

1 All right. Without identifying documents with any
2 specificity at all and the Government's failure to provide basic
3 information like -- okay. How broad a problem are we talking
4 about here? How many interrogatory responses?

5 MS. SWIFT: Pretty broad. Your Honor, it's 16
6 interrogatory responses that the Government has used this for.

7 THE COURT: Sixteen.

8 THE COURT: And what have been the nature of the
9 interrogatories?

10 MS. SWIFT: A lot of them ask them to identify
11 communications -- specific communications with Defendants about
12 -- for example, one of the issues in this case is the method of a
13 dual trigger in Defendants suspicious order monitoring system.
14 We say identify every time you communicated with Defendants about
15 the dual trigger system. And they say that might be in some
16 documents that we may have already given you or that we will at
17 some point in the unknown future give you. And those may or may
18 not be contained in some form of a custodial file.

19 THE COURT: Well, that's not the specificity that the
20 rule requires.

21 MS. SWIFT: Certainly not, Your Honor.

22 THE COURT: So if the Government is going to use Rule
23 33(d) to respond, and I can see in a case like this where that
24 could be an appropriate option under the rules, the Government is
25 obligated to specify the records that must be reviewed in

1 sufficient detail to enable the interrogating party to locate and
2 identify the them and give the interrogating party a reasonable
3 opportunity to examine and audit the records, et cetera. Well,
4 two, will get taken care of in discovery. But if you want to
5 rely on 33(d), you have to be specific. Has that been the case?

6 MS. SOHN: Your Honor, I'll be addressing this one. I
7 guess I want to start by emphasizing the breadth of the
8 interrogatories that have been propounded --

9 THE COURT: And, you know, I'm a little bit --
10 obviously, nobody filed a motion. I'm trying to be helpful. I
11 don't have anything in front of me. I don't have the specific
12 interrogatories. Interrogatories are, in my opinion, relatively
13 useless and, you know, do a lot to slow up discovery and
14 litigation. The questions are, and I haven't seen yours, so this
15 does not apply to the Defendants. But gee whiz, these questions,
16 these issues that I resolve, the interrogatories are just
17 ridiculously overbroad --

18 MS. SOHN: Yes.

19 THE COURT: -- and, as a practical matter, impossible
20 for anybody to comply with. I'm not saying that's what they've
21 done. You probably will, and I can't agree with you or not,
22 because I don't have them in front of me. But what is the
23 problem? And you know, if you're going to use 33(d), why can't
24 you be more specific in what you're referring them to? Because
25 the interrogatory is too broad.

1 MS. SOHN: Your Honor, the interrogatories are
2 incredibly broad. They essentially ask for every communication
3 between DEA and Defendants over an unspecified time period on a
4 number of topics.

5 THE COURT: Okay. Stop right there. If that's true,
6 that is overbroad.

7 MS. SOHN: Yes. And I would like to highlight also
8 that it's communication between the Government and Defendants.
9 So these are communication that Defendants presumably have as
10 well or are aware of. So it's -- as an initial matter, it's a
11 little unclear why they need to propound rogs on the Government,
12 asking us to essentially create a log of communications that the
13 Government had with Defendants.

14 And as Ms. DeLine talked about, there were dozens of
15 DEA employees over the 10-year time period that were
16 communicating with Defendants. So in our -- we think, initially,
17 that the interrogatories are incredibly overbroad. And like I
18 said, they're unduly burdensome because they already have the
19 relevant communications. That being said, we did our best to
20 identify where we think these communications -- what exists. We,
21 me standing here, I don't know if these -- if some of these
22 communications even exist. I can tell you where we believe --

23 THE COURT: Where they would be if they did.

24 MS. SOHN: Yes. And it's what we gave them. We gave
25 them the investigative files of the DIs that were working with

1 Defendants. We gave them the names of the custodians that -- or
2 the custodial files where -- you know, these are the people that
3 we understand are communicating with Defendants. But this is not
4 the Government, like, not wanting to do its work. Like we -- in
5 order for me to put together a list of the communications, I
6 would have to review all the documents that I've redirected
7 Defendants to and create a list.

8 THE COURT: Do you have one of these interrogatories
9 with you?

10 MS. SWIFT: Yes, Your Honor. I'm happy to bring it up,
11 Your Honor, or just read it.

12 THE COURT: It's hard for me to read it from here. A
13 couple years ago, maybe, but my eyes have changed. No, I'll look
14 at it, Ms. Swift, and, obviously, I'll hand it right back to you.

15 MS. SWIFT: Okay. May I approach, Your Honor?

16 THE COURT: Yes, please.

17 MS. SWIFT: All right. And I apologize, this copy has
18 a couple highlights on it.

19 THE COURT: Anything you don't want me to see?

20 MS. SWIFT: Nothing I don't want you to see.

21 THE COURT: All right. Okay.

22 THE COURT: Wow. You really think that about her?
23 Okay. All right. So the -- where's the interrogatory
24 themselves? Okay. Which ones would be in dispute, Ms. Swift?
25 Do you know now that I have your copy?

1 MS. SWIFT: Yes, Your Honor. Actually, this entire set
2 is currently in dispute. The Government has not answered any of
3 them.

4 THE COURT: That's what I was afraid you were going to
5 say. Right.

6 MS. SWIFT: However, interrogatories 20 through 26 of
7 this set are the interrogatories that the Government invoked Rule
8 33(d) to answer.

9 THE COURT: Oh, double-sided. Okay. All right. All
10 right, 20. Okay. Identify every instance where you, meaning our
11 great Government, communicated to AmerisourceBergen regarding
12 dual trigger mechanism, et cetera. For each instance, provide
13 the date of communication, the type of communication, the
14 substance of communication.

15 I understand and respect why you want this. That
16 interrogatory is nothing I would respond to if I were a
17 practicing lawyer. Every instance where you, the Government,
18 communicated to Amerisource, I can't expect people to respond to
19 that. The appropriate answer to that is to direct you to the
20 documents they're producing.

21 MS. SWIFT: Yes, Your Honor. I think the problem is,
22 though, the case law requires more if you're going to -- if
23 you're going to point us to the documents. There's case law to
24 support --

25 THE COURT: Well, the rule does too, right? More

1 specificity.

2 MS. SWIFT: Yeah. Yeah.

3 THE COURT: What do they do if they don't exactly even
4 know if it exists? And they're saying, but if it exists, this is
5 where we think it would be.

6 MS. SWIFT: Well, they haven't told us where they think
7 it would be. The rule and the case law requires them to identify
8 it by name. There's case law that says by name or by Bates
9 number. They have not done that. If they needed more time to
10 respond to these, they certainly could have asked us. And if
11 they don't know, they should state that in the interrogatory.
12 They should state we are not aware of any.

13 THE COURT: The United States incorporates, by
14 reference, the general statements as if fully rewritten. I love
15 this language. God, I really don't miss litigation. I really
16 don't. The United States further -- overly broad and unduly
17 burdensome. I agree with them so far. Every communication.
18 Okay. United States time period, double-sided always throws me
19 off.

20 MS. SWIFT: I apologize, Your Honor.

21 THE COURT: No. Nope, you didn't know I was going to
22 read it. Subject to and without waving, the United States
23 answers that pursuant to the parties ongoing discussions
24 regarding scope and breadth of discovery, subject to the parties
25 agreements (indiscernible) period. The United States agreed to

1 search for and produce certain non-privileged communications
2 between DEA personnel and the burden of deriving or ascertaining
3 by examining (indiscernible) substantially the same.

4 The United States, by reference to federal 33(d) and
5 cites the answer to this interrogatory may be determined by
6 examining DEA records that have been produced or will be
7 produced, including, but not limited to, and then they list
8 specific custodial files.

9 At first blush, I don't know that I've got a problem
10 with that.

11 MS. SWIFT: Yeah, Your Honor. I think the problem we
12 have is, first, that's not enough specificity under the rule and
13 under the case law. Second, we don't have those custodial files.
14 They haven't --

15 THE COURT: Well, that's a little different.

16 MS. SWIFT: -- they haven't produced them.

17 THE COURT: Right. I don't know exactly what the case
18 law requires, but they are directing you to the custodial files
19 of DEA Diversion investigators who led cyclical inspections.
20 Now, whether that is too broad a category that you don't know
21 that would be, that's one thing. They are then directing you to
22 the custodial files of specifically named people. I don't know.

23 MS. SWIFT: I think, Your Honor, our problem with this
24 is that we don't want to show up at trial, if there is a trial in
25 this case, and they say we told the Defendants that we had an

1 issue with the dual trigger. We told them that, or we told them
2 X, Y, or Z. And we said, wait a second, we asked you to identify
3 that, and you didn't -- you never identified that. Communication
4 doesn't just mean an email or a record. I understand that the
5 Government's position is if it happened, it's probably in a
6 document.

7 THE COURT: And, obviously, if they sought to introduce
8 evidence of that and you showed me a discovery request where you
9 asked for it and they didn't give it to you, I wouldn't let it
10 in.

11 MS. SWIFT: Well, we appreciate that, Your Honor. We
12 view this as them not giving us an answer. I think the
13 Government would probably say this is an answer and therein lies
14 the problem.

15 THE COURT: I think the bigger problem for you is the
16 Court might say this is an answer.

17 MS. SWIFT: That is the bigger problem, Your Honor.

18 THE COURT: Come on. At some point, folks, here, come
19 on. We got a lot of stuff. The Government brought the case, all
20 right. And, respectfully, you guys have a bigger burden, in my
21 view, to have your ducks in a row. All right. But at the same
22 time, you can't cast the net this broadly and expect them to be
23 able to do much with it.

24 MS. SWIFT: Yeah, I hear you, Your Honor. I don't
25 think it's that broad. It's tied specifically to the complaint.

1 To a specific paragraph in the complaint.

2 THE COURT: Every instance, over how long a period of
3 time?

4 MS. SWIFT: The dual trigger went into effect, I
5 believe, in 2014 or 2015.

6 THE COURT: All right.

7 MS. SWIFT: It would be that through 2022.

8 THE COURT: Okay. So eight years.

9 MS. SWIFT: Yes, Your Honor.

10 THE COURT: Every instance where anyone in the
11 Government agencies communicated to AmerisourceBergen. That's
12 pretty broad. And does AmerisourceBergen have these
13 communications?

14 MS. SWIFT: We don't think they -- we don't think they
15 have them, Your Honor. I mean, I think part of this is --

16 THE COURT: Okay.

17 MS. SWIFT: -- we're trying to figure out, do they know
18 something that we don't.

19 THE COURT: Okay. You don't think they happened?

20 MS. SWIFT: We don't think they communicated to us
21 about it.

22 THE COURT: You're asking the Government to produce
23 stuff you don't think exists. And to the extent it exists, you
24 would have it.

25 MS. SWIFT: I don't think that's necessarily fair, Your

1 Honor. We want to know if it exists. If it exists, we might not
2 necessarily have it.

3 THE COURT: Do you have any of it?

4 MS. SWIFT: Not that I have seen, Your Honor. And it
5 might have happened in a phone call.

6 THE COURT: Does your client have any of it?

7 MS. SWIFT: I don't think anybody's seen anything.

8 THE COURT: Are these documents that they would keep in
9 the ordinary course of their business? It seems to be pretty
10 important stuff.

11 MS. SWIFT: To the extent that it was documented. If
12 it was a phone call that nobody summarized or took notes on --

13 THE COURT: For Pete's sake, if it was a phone call
14 made by somebody on April 13th, 2017, they're not going to know
15 that.

16 MS. SWIFT: They may or they may not.

17 THE COURT: No, they're not. I just ruled that
18 effectively they are not. My verdict on this one is for the
19 Government.

20 MS. SWIFT: Okay. Thank you, Your Honor.

21 THE COURT: What's next.

22 MS. SWIFT: Your Honor, this is as a general matter, we
23 understand this is probably an interrogatory by interrogatory
24 analysis, and I hate to spend too much time on this.

25 THE COURT: Don't worry, I won't let you.

1 MS. SWIFT: We do just want to put a marker down that
2 as a general matter, if the Government plans on invoking Rule
3 33(d), they are required to give some specificity, unless Your
4 Honor determines that that specific interrogatory is too broad.

5 THE COURT: I just looked at one interrogatory --

6 MS. SWIFT: Exactly.

7 THE COURT: -- of the group that you pointed me to. I
8 agree with the Government's objection to that interrogatory.

9 MS. SWIFT: Yes, Your Honor.

10 THE COURT: And they're telling me that they can't be
11 more specific than they've been. If that ends up being not the
12 case, they'll have a lot more problems with me than you will.

13 MS. SWIFT: Yes, Your Honor.

14 THE COURT: That's all I can do. So now identification
15 of AmerisourceBergen's alleged violations. The Government has
16 yet to provide Defendants with alleged violations despite having
17 the data to do so for nearly eight months. The alleged
18 violations are the foundation of the Government's case and inform
19 other areas of discovery, including third-party discovery.

20 What is an alleged violation?

21 MS. SWIFT: So, Your Honor, this case is brought under
22 the Support Act. Under the Support Act, the Government is
23 alleging that we, the Defendants, failed to report specific
24 suspicious orders. Each instance is an alleged violation that
25 they have to prove that Defendants are entitled to discovery on

1 each one of those violations.

2 THE COURT: Understood, and that's what I thought you
3 might say. But aren't the alleged violations communicated to
4 AmerisourceBergen at the time they're alleged?

5 MS. SWIFT: We have -- we have received no information
6 from the Government in terms of what specific orders they contend
7 we should have reported as suspicious but did not in the year
8 2022 for AmerisourceBergen?

9 THE COURT: Just that year.

10 MS. SWIFT: Just that year, Your Honor.

11 THE COURT: Why just that year? Is there -- what makes
12 2022 special?

13 MS. SOHN: Sure, I can address that, Your Honor. We
14 provided a preliminary list about a year ago and the simple
15 answer is we did not have data from AmerisourceBergen at the time
16 regarding their orders in 2022. So we -- obviously, were not
17 able to provide -- I mean, the whole --

18 THE COURT: Are there any alleged violations for the
19 calendar year 2022?

20 MS. SOHN: Yes, Your Honor.

21 THE COURT: Where would documents reflecting those
22 reside?

23 MS. SOHN: They are residing data that Defendants have
24 produced to the Government, and we have been working on it.
25 Again, this is --

1 THE COURT: They reside in data that Defendants have
2 produced to the Government.

3 MS. SOHN: Yes.

4 THE COURT: That doesn't make a lot of sense. She's
5 telling -- she's just saying that the answers to what you are
6 seeking are in the data that you gave the Government.

7 MS. SOHN: Yes, Your Honor.

8 THE COURT: Does that make sense to you?

9 MS. SWIFT: Kind of, in a way, Your Honor. I believe
10 the Government is using what's referred to as Defendants' order
11 monitoring program data, which is data that shows orders that
12 went through Defendants' system -- suspicious order monitoring
13 system to identify specific orders.

14 Our understanding, our belief, is that if we didn't
15 report it to DEA, it wasn't suspicious. They have taken our data
16 for other years and they have given us -- they've generated a
17 list of here are all the alleged violations. For 2022, they've
18 had the data to do so for over eight months at this point.

19 THE COURT: I see what you're saying. So when are you
20 going to be able to take from their data the violations you
21 allege they committed?

22 MS. SOHN: We are actively working on it. We plan --
23 as we've mentioned in our meet and confer conferences, we're
24 actively working on it. I expect to have it in the next week or
25 two. Like, we're actively working on it. There's a lot of data

1 at issue. There's, unfortunately, you know, machine time, like
2 things that are out of our control and given all the other
3 issues. You know, it's not something we can just create at the
4 snap of a finger, but we are actively working on it. You know, I
5 would like --

6 THE COURT: Two weeks?

7 MS. SOHN: I think two weeks. Yeah, that's --

8 THE COURT: Two weeks it is. You got two weeks. All
9 right. I'll put that in my order.

10 Production of suspicious order data for 2014, 2018.
11 Defendants have repeatedly requested the Government produce 2014,
12 2018 suspicious order data housed by DEA. The parties have
13 agreed that the relevant time period for discovery is 2014
14 through 2022, though the parties have also agreed there will be
15 some relevant discovery before 2014. Two, to date, the
16 Government has not agreed to produce this data and has not
17 provided an adequate basis for its refusal.

18 All right. So, Ms. Sohn, what's going on with this
19 one?

20 MS. DELINE: Your Honor, I'm happy to address this one.
21 Unless you would like Ms. Swift to start, but I think we have the
22 same timeline. As we were talking about, we have these sort of
23 two buckets of discovery. There is customer related discovery,
24 and there is non-customer, sort of all of the other stuff.

25 Back in April of last year, we started negotiating a

1 customer discovery plan. It has some tiers to it. Customers
2 fall into different tiers. What Defendants are going to get for
3 each tier is different. What we're going to get is different for
4 each tier. As part of that tiered approach to customer
5 discovery, we, following Your Honor's order on the motion to
6 dismiss -- motion to dismiss, offered to produce this order --
7 this source data, suspicious order report data for 2018 through
8 2022, because those are the violations that remain at issue in
9 this case.

10 THE COURT: Right.

11 MS. DELINE: We did that last April, April 2024. We
12 had then ongoing negotiations about customer discovery for the
13 next 10 months, in which Defendants back and forth, back and
14 forth, agreed that the source data we were producing would be
15 2018 through 2022. Until February of this year, literally
16 exactly two months ago, they sent an email and said, we would
17 also like the 2014 through 2018 data.

18 As part of our meet and confer and our good faith
19 effort to engage on discovery, we said, okay, we'll take that
20 back. As you can probably imagine, DEA had a lot of questions
21 about why an --

22 THE COURT: The data from 2014 to 2018 was first
23 requested from you when?

24 MS. DELINE: Initially in their RFPs back in 2023, it
25 was in there. We then came to a customer discovery proposal --

1 THE COURT: Right.

2 MS. DELINE: -- that excluded it --

3 THE COURT: Okay.

4 MS. DELINE: -- that we were all on the same page
5 about. Then in February of this year, two months ago, they said,
6 hey, we want the '14 through '18 data.

7 THE COURT: Okay.

8 MS. DELINE: We didn't say no. We said, hey, we
9 previously had this agreement. We understand why you think it's
10 relevant. We understand why you want the '14 through '18 data.
11 Let us take it back to DEA. As you can imagine, DEA was -- had
12 questions about why after 10 months, now they're asking for more
13 data. We've been working through those questions with DEA. I,
14 in fact, think that as of this week, we likely can produce this
15 data. There's some questions and issues to talk to Defendants
16 about and work through. I think there's some reciprocal
17 modifications we would like to customer discovery plan. But we
18 have been, for the past two months, talking to DEA to get to a
19 point where we can say, yeah, let's go ahead and produce this
20 data.

21 THE COURT: And I imagine, Ms. Swift, your position
22 might be, even though we agreed on 2018 to 2022, it was never at
23 the expense of 2014 to 2018, right?

24 MS. SWIFT: Yes, Your Honor.

25 THE COURT: Okay.

1 MS. SWIFT: Yes, Your Honor. And I actually don't
2 believe that that recitation is 100 percent accurate. The
3 parties --

4 THE COURT: That was diplomatic.

5 MS. SWIFT: Yeah. The parties were negotiating this
6 customer discovery through December of 2024. They were
7 negotiating the tier three. And tier three is where this data
8 showed up. We had been negotiating it through December. There
9 was no agreement. There was no signed anything. We were
10 negotiating it through December.

11 They finally gave us '18 through 2022 data in January.
12 The parties are currently working through deficiencies in that
13 set of data because there are some and Defendants said in
14 February, a month or two after these tier three negotiations, we
15 would also like the 2014-2018 data. We had given them our data
16 from that same time period. Both parties have agreed that the
17 relevant time period is 2014 to 2022, although with an asterisk
18 that there is some relevant information before 2014.

19 The Government, as a third-party, produced this same
20 data from 2006 to 2014 in the cities, counties, and states.
21 Opioid litigation, and they haven't really articulated to us any
22 basis to not produce this in this case.

23 THE COURT: Meanwhile, you've been receiving and
24 digesting the 2018-2022 stuff, right?

25 MS. SWIFT: Recently, Your Honor.

1 THE COURT: Yeah. Okay. So how much longer before --
2 will you need before you're able to get them 2014 to 2018?

3 MS. DELINE: Yeah, I think it actually will take about
4 three weeks to pull, but before -- Your Honor, before

5 THE COURT: Did you say two?

6 MS. DELINE: Sorry, about three weeks.

7 THE COURT: Okay.

8 MS. DELINE: About three weeks. DEA often gives us
9 optimistic deadlines, so I would actually probably say four or
10 five just because of how things go.

11 THE COURT: Well, I'll say three, and you can tell DEA.

12 MS. DELINE: Okay. However, Your Honor, I do think
13 there is some -- I agree with Ms. Swift. We never signed
14 anything. But our discussions were about '18 through 2022 data
15 onward.

16 THE COURT: I understand. I understand. I understand.
17 It sounds as though we've got a big timeframe. There was a more
18 specific timeframe prioritized, but there was never an
19 understanding, nor could there have been that the other timeframe
20 was off the table.

21 MS. DELINE: I'm not sure that I would agree with that.

22 THE COURT: Right.

23 MS. DELINE: But some setting that aside, I think there
24 are --

25 THE COURT: We prioritized 2018 to 2022.

1 MS. DELINE: Yes.

2 THE COURT: They just got it in January. I don't know
3 whether that was unfairly late or took too long. You say it did.
4 I don't know. You say it didn't. Whatever. They have it.
5 They're digesting it.

6 MS. DELINE: That's right.

7 THE COURT: And you'll get them the 2014-2018.

8 MS. DELINE: Yes, Your Honor, but we would -- I guess
9 we can talk about this in our meet and confer, because I don't
10 think this is something that rises to the level of you having to
11 rule on it, but there are reciprocal edits that we would like to
12 our customer discovery negotiations. As a result, we're agreeing
13 to give them something that we long ago understood was no longer
14 on the table.

15 So we can talk about it in meet and confers, but I do
16 think that if we're going to produce this data, there's
17 additional, you know, reciprocal changes that we would like on
18 our end.

19 THE COURT: I understand. Pace of production. We've
20 addressed that. Request for admissions responses. The
21 Government has largely objected and denied the request based on
22 its objections. Many of the objections relate to terminology
23 that is well known to the Government, like threshold that the
24 Government uses over 90 times in its own complaint.

25 Do you have an example of one of the -- of that? And I

1 can trade you your interrogatory --

2 MS. SWIFT: Sure, Your Honor. Defendants are still --
3 just for the record, we are still reviewing the RFAs and just
4 determining which ones we would like to move on.

5 THE COURT: Do you want to withhold discussion on these
6 until you've had the chance to do that?

7 MS. SWIFT: Yes, Your Honor. We just got a letter from
8 the Government responding to our letter.

9 THE COURT: Okay.

10 MS. SWIFT: So we would appreciate the opportunity to
11 discuss --

12 THE COURT: Happy to give that to you.. And then the
13 last item would be issues with the Government's privilege logs.
14 Defendants received the Government's first privileged logs in the
15 case last week, although Defendants are still analyzing these
16 logs and the parties will need to meet and confer. Defendants
17 have already identified issues with these logs.

18 Is that a little premature for me to take up? It
19 sounds like it, but I'm happy to hear you out.

20 MS. SWIFT: Yes, Your Honor. We think it's premature.
21 We just wanted to include it because we do think that's going to
22 be an anticipated dispute throughout discovery.

23 THE COURT: Okay. Okay. Well, look I'll put an order
24 together requiring the identification of the 2022 information by
25 April 2024. That's two weeks. Ms. Sohn seemed to think that was

1 okay.

2 The 2014 to 2018, by the end of the month, that's three
3 weeks. And then the item number one, the list of the individuals
4 by the end of the month as well. And let's just stay on that
5 pace.

6 Look, this is a -- oh, here. Liam, could you please
7 get that back to Ms. Swift?

8 THE COURT: Keep that on you. That will get lost in my
9 stack of paper, and you'll never know where your notes are.

10 Is there anything else that you would like to discuss
11 while we're together?

12 MS. SWIFT: Not for Defendants, Your Honor.

13 MR. SCOTT: Not for.

14 THE COURT: Okay. Look, this is a -- look, this is a
15 very big case. It involves buildings filled with documents and
16 people. I get it. The Government. You know, the Government
17 needs to have its ducks in a row and needs to know what's
18 relevant, and where it is, and get it to the Defendants. I mean,
19 that's all -- that is what they're entitled to.

20 You've done a lot of work. Try working faster. As my
21 wife would tell me, work smarter, not harder. Be a little more
22 realistic in some of the discovery requests, particularly when
23 they involve documents that either you don't know exist or that
24 if they exist, you would have.

25 MS. SWIFT: Yes, Your Honor.

1 THE COURT: All right. Do I get paid the Special
2 Master fee? You sure no one else has anything while we're all
3 here together?

4 All right. You're doing a great job. I know you're
5 working really hard. I know it's a lot. It's litigation. If
6 you didn't spend half the time being mad at each other, it
7 wouldn't be litigation.

8 Thank you for all your efforts. Obviously, this is a
9 big case, a big undertaking. The defense is working hard, and
10 the Government's doing what it has to do. Quicker, would be
11 better. And I'm here if you need me.

12 To, I guess, close with the reason for the status
13 conference. I don't have a party agreeing that a Special Master
14 is necessary. Based on what I saw here today, this is pretty
15 routine stuff. I'm happy to deal with it. I guess, based on my
16 one experience, you'll know if I think you need a Special Master
17 when I just get completely sick of both of you, all right.

18 But look, continue to do what you're doing. The meet
19 and confer is great. I know that's a lot of work. I appreciate
20 it. I'm not saying this would never be the case for a Special
21 Master, but it seems like it's more a question of where is this
22 stuff and when do we get it? And hopefully we can work through
23 that.

24 Our current schedule, which I didn't bring with me, has
25 what again, the 25th is the deadline for -- go ahead.

1 MS. SWIFT: Document production.

2 THE COURT: Document production. And then what is --
3 and this is the schedule that you jointly proposed and that we
4 massaged and put out, right?

5 MS. SWIFT: Yes, Your Honor.

6 THE COURT: Okay. What, ma'am, comes after 25th of
7 July? What's the next date?

8 MS. SWIFT: The next deadline is September 26th, for
9 any dispute regarding requests for production to be raised with
10 the Court.

11 THE COURT: Oh, shoot. We got a lot of time. And then
12 after that?

13 MS. SWIFT: After that is fact discovery should be
14 completed by January 9th, 2026.

15 THE COURT: Okay.

16 THE COURT: You're doing all right.

17 THE COURT: You're okay. You're okay. I'm sorry
18 you're frustrated. It hasn't been quicker. I get it. But keep
19 going. I'm here if you need me.

20 MR. SCOTT: Thank Your Honor.

21 MS. SWIFT: Thank you, Your Honor.

22 MS. DELINE: Thank you, Your Honor.

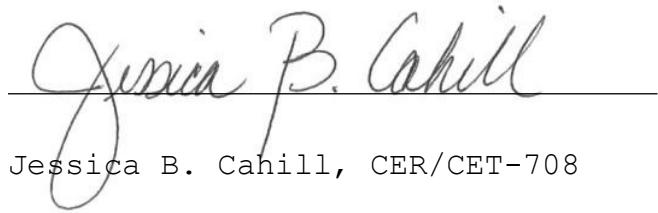
23 THE COURT: You're welcome. Thank you. Have a good
24 weekend. Good holidays coming up for everybody.

25 (Proceedings concluded at 2:11 p.m.)

CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: April 23, 2025



Jessica B. Cahill, CER/CET-708